

UNITED STATES SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C.

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| In the Matter of                | ) | FINAL AGENCY DECISION       |
|                                 | ) | PERMANENTLY REVOKING        |
| DELVAL BUSINESS FINANCE         | ) | AUTHORITY TO PARTICIPATE IN |
| CORPORATION                     | ) | 504 LOAN PROGRAM AND        |
|                                 | ) | PERMANENTLY TRANSFERRING    |
| (Certified Development Company) | ) | 504 LOAN PORTFOLIO          |
|                                 | ) |                             |
|                                 | ) |                             |

This Final Agency Decision (Decision) relates to **DELVAL BUSINESS FINANCE CORPORATION** (“DelVal”), a Pennsylvania non-profit corporation authorized by the U.S. Small Business Administration (“SBA” or the “Agency”) to participate as a Certified Development Company (“CDC”) in the Agency's 504 Loan Program.

On March 30, 2017, in accordance with 13 C.F.R. § 120.1600(a)(1), the Agency served DelVal with notice of (a) the proposed permanent revocation, pursuant to 13 C.F.R. § 120.1500(a)(3), of DelVal’s authority to participate in SBA’s 504 Loan Program, and (b) the proposed permanent transfer, pursuant to 13 C.F.R. § 120.1500(e)(1), of DelVal’s 504 Loan Portfolio, all of its pending 504 Loan applications, and all rights associated therewith to SBA, another CDC or entity designated by SBA (hereinafter referred to as “Notice” or “Notice of Proposed Enforcement Action”).

Based upon a review of the record, including submissions by and on behalf of DelVal and SBA records, and for the reasons detailed below, the Agency hereby renders its Decision as follows:

- DelVal’s authority to participate in all aspects of SBA’s 504 Loan Program is hereby **PERMANENTLY REVOKED** pursuant to 13 C.F.R. § 120.1500(a)(3).
- Pursuant to 13 C.F.R. § 120.1500(e)(1), the SBA 504 Loan Portfolio and all of the pending SBA 504 Loan applications, and all rights associated therewith (including all processing, closing, servicing, late and other fees received and/or due and payable after the date of this Decision), are hereby **TRANSFERRED ON A PERMANENT BASIS** to Global Management Services, LLC (as agent for SBA), and such other entity or entities as the Agency shall hereafter direct.
- SBA’s Central Servicing Agent, PricewaterhouseCoopers Public Sector LLP, is ordered to withhold from DelVal and to transfer all processing, closing, servicing, late and other fees received and/or due and payable on the SBA 504 Loan Portfolio and the pending SBA 504 Loan applications to SBA and/or such other entity or entities as the Agency shall hereafter direct.

- DelVal and its officers, directors and employees are ordered to maintain all databases, records, files and documents associated with its dealings with SBA and its activities as a CDC, and to cooperate fully, allow such access, provide all such information and documents to, and follow such instructions from SBA and its designated agent, Global Management Services, LLC, as well as PricewaterhouseCoopers Public Sector LLP (as agent for SBA), as are associated with administering and implementing the foregoing permanent revocation and transfer.

This Decision is effective immediately.

## **I. OVERVIEW**

Section II of this Final Agency Decision describes the factual background of the SBA 504 Loan Program and DelVal's participation in that Program. Section III explains the enforcement action history against DelVal. Section IV discusses the grounds for the enforcement action, analyzes DelVal's responses to the grounds, and sets forth SBA's final decision on each ground. Section V summarizes the Final Agency Decision. Section VI provides DelVal with notice of its appeal rights from this Final Agency Decision.

## **II. FACTUAL BACKGROUND**

### **1. Description of the SBA 504 Loan Program**

The purpose of the SBA 504 Loan Program is to foster economic development, create or preserve job opportunities, and stimulate growth, expansion and modernization by providing long-term financing not otherwise available to small business concerns for the acquisition, construction, conversion or expansion of fixed assets, including real estate and heavy machinery and equipment. *See* 15 U.S.C. §§ 695(a) and 696(a) and 13 C.F.R. § 120.800. Under the 504 Loan Program, SBA does not make loans directly to small business concerns. *See* 15 U.S.C. § 695. Instead, as required by statute, CDCs deliver SBA's 504 Loan Program to small business borrowers on behalf of SBA. *Id.* CDCs are non-profit corporations (except for a few older for-profit ones that were grandfathered) certified and regulated by SBA and organized to contribute to the economic development of a particular community or region. *See* 13 C.F.R. §§ 120.816 and 120.823. Currently, there are approximately 230 CDCs, and the outstanding balance of SBA's 504 Loan portfolio exceeds \$26.8 billion.

No CDC monies are used to fund a 504 Loan; rather a 504 Loan is funded by the sale of a CDC debenture that is 100% guaranteed by SBA (with the full faith and credit of the United States). *See* 15 U.S.C. § 697 and 13 C.F.R. § 120.801(d). CDCs receive processing and closing fees for originating 504 Loans on behalf of SBA and servicing fees for servicing 504 Loans on behalf of SBA. *See* 13 C.F.R. § 120.971.

To be designated as a CDC, the applicant must demonstrate to SBA that it satisfies the CDC certification and operational requirements identified in 13 C.F.R. § 120.810(c). A CDC must continue to comply with all SBA Loan Program Requirements during its participation in the 504 Loan Program. *See* 13 C.F.R. § 120.826. Loan Program Requirements are defined in SBA’s regulations at 13 C.F.R. § 120.10 as follows:

. . . [R]equirements imposed upon Lenders or CDCs by statute, SBA regulations, any agreement the Lender or CDC has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 7(a) and 504 loan programs, and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in § 120.802.

In order to carry out its regulatory and oversight responsibilities for CDCs, SBA requires a CDC to submit an Annual Report within 180 days after the end of the CDC’s fiscal year and such interim reports as SBA may require. *See* 13 C.F.R. § 120.830(a). If the CDC has an SBA 504 Loan portfolio balance of \$20 million or more, the CDC’s Annual Report must contain audited financial statements. *See* 13 C.F.R. § 120.826(c). CDCs are also subject to SBA’s risk-based lender oversight regulations contained in Subpart I of 13 C.F.R. Part 120. SBA’s oversight of CDCs includes the right to review, inspect and copy all records and documents, and to perform periodic on-site reviews and off-site monitoring. *See* 13 C.F.R. §§ 120.1025 and 120.1050. *See also*, SBA Policy Notice 5000-1348, Revised Risk-Based Review Protocol for Certified Development Companies, issued August 5, 2015, and SBA Policy Notice 5000-1398, Updated SMART Methodology for Oversight of CDCs, issued November 9, 2016. Finally, CDCs are subject to SBA’s lender enforcement process set forth in 13 C.F.R. § 120.1400 *et seq.*

## **2. DelVal’s Participation in the SBA 504 Loan Program**

DelVal is a non-profit CDC located in Gettysburg, Pennsylvania. DelVal was approved by SBA to participate in the SBA 504 Loan Program in July, 1982.<sup>1</sup> Michael Schwartz is the President and Chief Executive Officer of DelVal and has been serving in the position since at least 1993. DelVal obtained Accredited Lenders Program (“ALP”) status in November, 1998, which is a type of delegated status that provided DelVal with increased authority to process, close, and service 504 Loans. DelVal’s ALP status expired in November, 2000 and was not renewed. Currently, DelVal has no delegated authority.

As of June 30, 2017, DelVal’s 504 Loan portfolio consisted of 89 loans with a total outstanding balance of \$56,114,697. DelVal received \$297,539.69 in servicing fee income from its 504 Loan portfolio during the six-month period of January 1 through June 30, 2017. By number of 504

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<sup>1</sup> DelVal adopted its current name in December, 1994. It previously operated under the name “Quaker State CDC.”

Loans outstanding, DelVal currently ranks fifth among CDCs located in the Commonwealth of Pennsylvania.

### **III. ENFORCEMENT ACTION HISTORY**

#### **1. 2008 Risk-Based Review Report and Establishment of Pattern of Late Annual Report Submissions**

In 2008, SBA issued an SBA 504 Loan Program Risk-Based Review Report to DelVal that contained, among other things, a Finding and Corrective Action regarding DelVal's late submission of its fiscal year 2006 Annual Report. DelVal continued with this compliance failure by providing late submissions of its Annual Reports for fiscal years 2007, 2008, 2009 and 2010.

#### **2. Continued Pattern of Late Annual Report Submissions and February 10, 2014 Notice of Non-Compliance**

Continuing with the pattern of late submission of its Annual Reports, DelVal failed to submit its fiscal year 2011 and 2012 Annual Reports to SBA as required (due on or before June 30, 2012 and June 30, 2013, respectively). Due to these failures, SBA sent DelVal notification on February 10, 2014 of its non-compliance with SBA Loan Program Requirements, required corrective actions to address the non-compliance, and advised DelVal that SBA was overriding DelVal's Risk Rating from an "Acceptable" Risk Rating of "3" to a "Less Than Acceptable" Risk Rating of "5" due to the non-compliance ("Non-Compliance Notice").<sup>2</sup> DelVal finally submitted its 2011 Annual Report on May 9, 2014, approximately two years late, and its 2012 Annual Report on the same date, approximately one year late. DelVal continued the pattern by submitting its 2013 Annual Report (due on or before June 30, 2014) on September 25, 2014, approximately three months late.

#### **3. August 3, 2015 SMART Analytical Review Report**

After eight consecutive years of late Annual Report submissions, DelVal once again failed to submit its 2014 Annual Report to SBA within the required timeframe (due on or before June 30, 2015). On August 3, 2015, SBA issued a SMART Analytical Review Report ("SAR") to DelVal. The SAR contained 17 Findings and Corrective Actions, including a Repeat Finding due to DelVal's failure to submit its 2014 Annual Report.

SBA also notified DelVal that, to follow-up on these Findings, SBA would be conducting a SMART Targeted Review on-site at DelVal beginning on September 9, 2015. On September 2, 2015, DelVal submitted a response to the SAR, acknowledging that its fiscal year 2014 Annual

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<sup>2</sup> Risk Ratings are assigned on a "1" to "5" scale, with "1" reflective of a lower risk and "5" reflective of greater risk. *See* 13 C.F.R. § 120.1015; SOP 50 53 (A) at 6. SBA's authority to downgrade a Risk Rating is part of its oversight authority to engage in increased supervision of a Lender. *See* SOP 50 53 (A) at 14.

Report was past due and stating that the 2014 Annual Report would be submitted to SBA before the SMART Targeted Review began on September 9, 2015. Despite this promise, DelVal failed to submit the 2014 Annual Report by such date. SBA conducted the SMART Targeted Review as scheduled.

#### **4. April 1, 2016 SMART Targeted Review Report with Findings and Corrective Actions**

On April 1, 2016, SBA issued a SMART Targeted Review Report (“Report”) with the results of DelVal’s September 2015 SMART Targeted Review. The Report identified 23 Findings and Corrective Actions that DelVal was required to address in writing by May 1, 2016. The Report included a Repeat Finding that DelVal failed to submit its 2014 Annual Report, which by the date of the Report was then ten months overdue. On April 26, 2016, DelVal requested an extension until June 1, 2016 to respond. SBA granted this request.

#### **5. DelVal’s May 27, 2016 and June 30, 2016 Corrective Action Response to Report**

By letter dated May 27, 2016, DelVal submitted a response to the Report. DelVal acknowledged that the response was incomplete because it did not include DelVal’s 2014 Annual Report as required. DelVal indicated that it would be submitting the 2014 Annual Report along with its 2015 Annual Report on June 30, 2016, the due date for the 2015 Annual Report. By letter dated June 20, 2016, SBA provided DelVal with a final opportunity to submit its 2014 Annual Report and stated SBA’s expectation that DelVal would timely submit its 2015 Annual Report to SBA no later than June 30, 2016. SBA further stated in the letter that if DelVal failed to submit full and complete 2014 and 2015 Annual Reports to SBA by June 30, 2016, it would consider taking enforcement action against DelVal. On June 30, 2016, DelVal submitted its 2014 and 2015 Annual Reports to SBA; however both Annual Reports were incomplete.

#### **6. August 5, 2016 Notice of Actions Uncooperative and Detrimental to the SBA 504 Program and Opportunity to Cure Before Initiation of Enforcement Action**

SBA reviewed DelVal’s May 27, 2016 and June 30, 2016 submissions (collectively “Corrective Action Response”) and determined that DelVal failed to sufficiently resolve 20 of the 23 Findings and Corrective Actions, including noncompliance with Annual Report submission requirements. As a consequence of these failures, SBA determined that DelVal’s actions were uncooperative and detrimental to the SBA 504 Program, undermined SBA management of the program, and were not consistent with standards of good conduct.

On August 5, 2016, SBA sent DelVal a 13 C.F.R. § 120.1400(c)(6) Notice of Actions Uncooperative and Detrimental to the SBA 504 Program and Opportunity to Cure Before Initiation of Enforcement Action (“Cure Notice”). The Cure Notice identified each of the 20 outstanding Findings and Corrective Actions, along with SBA’s analysis of DelVal’s continuing non-compliance, and set forth the actions that DelVal was required to take on or before August

26, 2016 to come into compliance. DelVal was advised that if it failed to cure all 20 outstanding deficiencies by the deadline, such failure could give rise to SBA proposing an enforcement action against DelVal, including suspension, permanent revocation, debarment, portfolio transfer and/or withholding of fees.

By email dated August 19, 2016, DelVal requested a thirty-day extension until September 30, 2016 to comply with the requirements of the Cure Notice. By letter dated August 24, 2016, SBA granted DelVal an eleven-day extension, giving DelVal until the close of business on September 6, 2016 to come into compliance.

## **7. DelVal's September 6, 2016 Cure Notice Response**

On September 6, 2016, DelVal submitted its response to the Cure Notice ("Cure Response"). SBA reviewed the Cure Response and determined that DelVal continued to fail to cure 14 of the 20 deficiencies identified in the Cure Notice, including DelVal's failure to cure the Annual Report non-compliances.

## **8. March 30, 2017 Notice of Proposed Enforcement Action**

On March 30, 2017, SBA issued the Notice of Proposed Enforcement Action to DelVal.<sup>3</sup> In accordance with the procedures required for enforcement actions in 13 C.F.R. § 120.1600(a)(1), the Notice advised DelVal that SBA was proposing the permanent revocation, pursuant to 13 C.F.R. § 120.1500(a)(3), of DelVal's authority to participate in all aspects of the 504 Loan Program, including all powers associated therewith, and the transfer on a permanent basis, pursuant to 13 C.F.R. § 120.1500(e)(1), of all of DelVal's existing SBA 504 Loan portfolio and pending SBA 504 Loan applications and all rights associated therewith (including all processing, closing, servicing, late and other fees received and/or due and payable on DelVal's SBA 504 Loan portfolio) to SBA, another Certified Development Company or other entity designated by SBA.

The Notice set forth the following grounds for the proposed enforcement action:

1. 13 C.F.R. § 120.1400(c)(6): Failure to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct, after receipt of prior written notice and opportunity to cure the deficiencies before initiation of specified enforcement action(s).
2. 13 C.F.R. § 120.1400(c)(2): Failure to Comply Materially with Any Requirement Imposed by SBA's Loan Program Requirements

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<sup>3</sup> SBA originally sent the Notice of Proposed Enforcement Action to DelVal on March 29, 2017, but the Notice contained a printing error on page 25. SBA corrected the error and sent the corrected Notice to DelVal on March 30, 2017.

3. 13 C.F.R. § 120.1400(c)(7): Repeated Failure to Correct Continuing Deficiencies

4. 13 C.F.R. § 120.1400(c)(9): DelVal's Actions Have Increased SBA's Financial Risk

The facts SBA stated in support of the above grounds were the 14 deficiencies that DelVal was first required to remedy pursuant to the Report on or before May 1, 2016, and then again in the Cure Notice on or before August 26, 2016, but that remained unresolved.

#### **9. DelVal's April 4, 2017 Request for a Meeting**

On April 4, 2017, DelVal sent an email to SBA requesting an April 10, 2017 meeting with SBA to discuss the Notice. On April 5, 2017, SBA advised DelVal that it should follow the procedures set forth in the Notice and submit a written response if it desired to contest the Notice, request clarification, or request additional time to respond.

#### **10. DelVal's May 4, 2017 Request for an Extension**

On May 4, 2017, DelVal requested an extension of time up to and including June 4, 2017 to respond to the Notice. SBA agreed to this request for extension giving DelVal until June 5, 2017 to respond because June 4, 2017 was a Sunday. Along with the request for extension, DelVal included a "preliminary" response to the Notice identifying certain actions it had taken in response to the Notice.

#### **11. DelVal's June 2017 Response to the Notice of Proposed Enforcement Action**

On June 5, 2017, DelVal submitted to SBA by email a response to the Notice. On or about June 6, 2017, one day late, SBA received from DelVal a response via postal mail. The two responses received by SBA were different in some respects. Both responses included the same June 5, 2017 sixteen-page response letter, but the response sent via postal mail included some additional attachments that were not provided in the response sent via email. In addition, it appears there was one document that was included in the emailed response that was not contained in the response received via postal mail.

On June 30, 2017, DelVal, through its attorney James Tressler, submitted to SBA via email additional information pertaining to the personal loan made by DelVal to its President, one of the deficiencies cited in the Notice. On July 8, 2017, DelVal, again through its attorney James Tressler, submitted a formal supplemental response to the Notice.

The May 4, June 5, June 6, June 30, and July 8, 2017 submissions received from DelVal will be collectively referred to as "DelVal's Response."

## 12. DelVal's fiscal year 2016 Annual Report

On June 30, 2017, DelVal timely submitted its fiscal year 2016 Annual Report to SBA, however as noted below it was incomplete.

#### **IV. GROUNDS FOR ENFORCEMENT ACTION**

**1. 13 C.F.R. § 120.1400(c)(6) – Failure to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct, after receipt of prior written notice and opportunity to cure the deficiencies before initiation of specified enforcement action(s).**

In Section I of the Notice, SBA charged DelVal with the failure to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct. The Notice specified 14 deficiencies that DelVal failed to cure after receiving written notice and the opportunity to cure before initiation of the enforcement action. These deficiencies include self-dealing by DelVal's President, repeated failures by DelVal's Board to exercise its responsibility to review the reasonableness of the salary of DelVal's President, repeated failures to timely submit full and complete Annual Reports, repeated failures by DelVal's Board to comply with corporate governance requirements, and repeated failures to comply with other program requirements.

Although SBA reviewed DelVal's Response and determined that DelVal cured six of the 14 deficiencies after receipt of the Notice, eight deficiencies remain, and DelVal's 2016 Annual Report, submitted to SBA subsequent to the Notice, reveals a continuing pattern of non-compliance. The facts demonstrate that DelVal (1) has an ineffective Board; (2) has a President, who though compensated at a rate almost three times higher than the managers of other Pennsylvania CDCs, has been unable to bring DelVal into regulatory compliance for over a decade; and (3) is not a satisfactory steward of a program that is funded with taxpayer money. For the following reasons, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with the standards of good conduct, after receipt of prior written notice and opportunity to cure the deficiencies before initiation of this enforcement action.



- a. *DelVal has failed to take the actions required by SBA to cure the deficiency associated with the loan to DelVal's President that impacts the adequacy of DelVal's reserves for its operations (13 C.F.R. § 120.823(d)(9)) and appears to be in violation of the prohibition against self-dealing by an Associate of a CDC (13 C.F.R. § 120.140(a)).*

In Section I.a. of the Notice, SBA charged that DelVal failed to take the actions required by SBA to cure the deficiency associated with the loan to DelVal's President that impacts the adequacy of DelVal's reserves for its operations (13 C.F.R. § 120.823(d)(9)) and appears to be in violation of the prohibition against self-dealing by an Associate of a CDC (13 C.F.R. § 120.140(a)). Pursuant to 13 C.F.R. § 120.823(d)(9), a CDC's Board of Directors is responsible for ensuring that a CDC establishes and maintains adequate reserves for operations. An Associate of a CDC (defined in 13 C.F.R. § 120.10 to include an officer) is prohibited from engaging in self-dealing under the provisions of 13 C.F.R. § 120.140(a).

Finding #1 of the Report stated that DelVal extended unsecured credit to its President, and this transaction represented an excessive risk by impacting liquidity and asset concentration of DelVal. The Report also found that considering the terms and conditions of the transaction, this appeared to be self-dealing by an Associate of the CDC, which is not in compliance with 13 C.F.R. § 120.140(a). In order to reduce the risk exposure, the Corrective Action set forth in the Report required that DelVal's Board of Directors renegotiate the contractual terms and conditions of the loan to ensure loan payoff by the 2020 loan maturity.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance because "[i]nstead of renegotiating the terms of the loan to ensure loan payoff by maturity as required by the Corrective Action, the CDC responded that the loan is secured by an assignment of life insurance policy by the beneficiary to the CDC in the amount of \$250,000." The Cure Notice provided the CDC with an opportunity to cure the deficiency by taking the following actions on or before August 26, 2016:

The CDC must provide documentation showing a plan to pay off the loan by the maturity date. The CDC must also submit evidence of an updated and current insurance policy which covers the amount of the Note to Officer, along with signed and dated certification from the Board of Directors providing the reason(s) for the loan and the explanation for why it is not a self-dealing.

SBA reviewed DelVal's Cure Response and determined that DelVal continued its non-compliance. The reasons for SBA's determination were set forth in the Notice, in part, as follows:

The Cure Response included a copy of a new Promissory Note, dated September 1, 2016, which replaces the original April, 2010 Note. [...] The new Promissory Note matures on September 30, 2017, with a balloon payment in excess of

\$170,000 due on that date. The renegotiated loan terms, with a large balloon payment due this year, do not meet the requirement to provide documentation of a plan to pay off the loan by the maturity date.

. . . Although DelVal provided a copy of an assignment of life insurance in favor of DelVal, the CDC failed to submit evidence of the purported \$500,000 coverage amount under the life insurance policy. . .

. . . DelVal stated that the loan was a means of additional compensation paid to the President due to the growth in DelVal's portfolio at the time. Despite this assertion and SBA's request for evidence, DelVal was unable to provide any supporting documentation showing that the Board of Directors approved this loan on that basis. SBA has also determined that DelVal's explanation is inadequate given the amount of the salaried compensation that the President received during the same time period . . . .

DelVal's Response includes (1) a copy of a personal check dated June 28, 2017 from DelVal's President, Michael Schwartz, to DelVal for the full amount of the personal loan (\$204,673.51); (2) a copy of a deposit slip dated June 28, 2017 showing a deposit in the amount of the personal check was made into DelVal's bank account; and (3) the July 5, 2017 letter from DelVal's attorney, James Tressler, verifying that the loan "was paid in full on June 28, 2017." While it appears that DelVal's reserves for operations are no longer impacted by this outstanding obligation of its President, the fact remains that DelVal failed to take action to address this regulatory violation until after it received the Notice from SBA.

The after-the-fact loan payoff does not cure DelVal's violation of the regulatory prohibition against self-dealing. In the Cure Notice, SBA required DelVal to submit a signed and dated certification from the Board of Directors providing the reason(s) for the loan and an explanation for why it is not self-dealing. DelVal's Cure Response claimed that the loan was a means of additional compensation paid to the President due to the growth in DelVal's portfolio, but DelVal was unable to provide any supporting documentation showing that the Board approved the loan on that basis (or on any basis). DelVal's Response to the Notice states that the loan was disclosed in financial reporting to SBA, but it is unable to "comment on what a past Board may have done," and only four Board Members who are currently on the Board were present when the loan was made to the President.

SBA has determined that these assertions are insufficient to justify DelVal's repeated failure to provide the required information regarding the reason(s) for the loan and an explanation for why the loan is not self-dealing. The statements in DelVal's Response to the Notice are inconsistent with the statements in DelVal's Cure Response. Further, there is no reason why the four Board Members who were present when the loan was made are now unable to comment. Although the loan may have been disclosed in DelVal's financial statements, this does not resolve the issue of self-dealing by DelVal's President.

DelVal's Response makes various assertions that its future conduct will be in compliance with SBA Loan Program Requirements. DelVal's Response states that a new Board member joined the Board and that his focus on compliance, governance, and adherence to the Revised Internal Controls and Loan Policies will ensure compliance. DelVal submitted revised Internal Controls as of May 31, 2017 which DelVal asserts "address the amount and type of compensation to the President." DelVal also submitted revised Bylaws as of May 31, 2017 which state that the "Board of Directors is vested with complete authority to lend to any person, other than Directors, officers, employees or agents of the Corporation . . . ." While DelVal's Response states that the "Board will ensure that personal loans will not be given to any DelVal employee in the future," neither the revised Internal Controls nor the Bylaws contains a clear prohibition on personal loans to employees.

SBA has determined that DelVal's assertions of prospective compliance do not overcome its repeated uncooperative behavior in failing to provide the required information to SBA. The record shows that DelVal failed to act to address the regulatory violations associated with the loan to its President until SBA initiated this enforcement action. The loan, which was unsecured and structured with minimal monthly payments and a large balloon, adversely affected DelVal's reserves for operations. Despite SBA's request, the Board is unable to explain the reason(s) for the loan and why it is not self-dealing by DelVal's President. Combined with the Board's failure to exercise its responsibilities to review and set reasonable compensation for DelVal's President, as discussed in the next section, the Board's continued failure to address the issue of self-dealing illustrates the serious weakness of the Board in its oversight of the CDC.

For the reasons herein, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to take the actions required by SBA to cure the deficiency associated with the loan to DelVal's President that impacts the adequacy of DelVal's reserves for its operations (13 C.F.R. § 120.823(d)(9)) and appears to be in violation of the prohibition against self-dealing by an Associate of a CDC (13 C.F.R. § 120.140(a)).

- b. *DelVal has failed to take the actions required by SBA to cure the deficiency associated with the Board's failure to review the salary paid to DelVal's President to ensure that it is reasonable and customary, in violation of 13 C.F.R. § 120.823(d)(3) and (d)(5).*

In Section I.b of the Notice, SBA charged and the below evidence demonstrates that DelVal failed to take the actions required by SBA to cure the deficiency associated with the Board's failure to review the salary paid to DelVal's President to ensure that it is reasonable and customary, in violation of 13 C.F.R. § 120.823(d)(3) and (d)(5). Title 13 C.F.R. § 120.823 sets forth the responsibilities of the Board of Directors. Title 13 C.F.R. § 120.823(d)(3) requires a

CDC's Board of Directors to set the salary for the CDC manager. In so doing, 13 C.F.R. § 120.823(d)(5) requires a CDC's Board of Directors to ensure that the CDC's expenses are reasonable and customary.

Finding #2 of the Report stated that DelVal's executive compensation expenditures are not commensurate with 13 C.F.R. § 120.823(d)(5) requirements, as they are not reasonable and customary for a CDC within its Area of Operations. The Report also stated that the Board was unable to provide documentation to support the analysis that was conducted to set the CDC's President's compensation.

The Corrective Action in the Report required the Board of Directors to establish an executive compensation policy that ensures the CDC's expenditures are commensurate with the CDC's fiscal condition, business dynamics, location and portfolio complexity. In addition, DelVal's Board of Directors was required to document the details of how it determined the level of compensation being paid to the CDC President.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance because "[t]he CDC's response discusses a salary reduction; however it does not provide evidence of an executive compensation policy, nor does it provide documentation of the process that Board followed to determine and ensure the expenditure of the President's salary is commensurate with the CDC's fiscal condition, business dynamics, complexity of the portfolio, or compared to similar entities by type and size in the geographic region."

The Cure Notice provided the CDC with an opportunity to cure the deficiency by taking the following actions on or before August 26, 2016:

The CDC must submit its executive compensation policy along with documentation of the process and analysis undertaken by the Board of Directors in determining the President's salary is commensurate with the CDC's fiscal condition, business dynamics, complexity of the portfolio, or compared to similar entities by type and size in the geographic region.

SBA reviewed DelVal's Cure Response and determined that DelVal remained in continuing non-compliance. The reasons for SBA's determination were set forth in SBA's Notice:

The Cure Response stated that the President's present and historical compensation was discussed by the Board of Directors at an August 30, 2015 work session and a September 1, 2015 Special Meeting, and that the Board looked at factors including overall profitability, cash flow, number of new loans originated, overall asset quality, loan volume, services provided by the President, and experience and complexity of duties performed. However, the Cure Response provided no

documentation showing discussions of the President's compensation in the Board meeting minutes.

The Cure Response also stated that the Board plans to create a formal compensation policy that will be adopted by the end of 2016, and the Board plans to consult with a compensation consultant, consider best practices for executive compensation, and review the President's compensation semi-annually. The Cure Response further noted that the CDC expects to reduce the President's salary in 2016 to \$350,000. However, no formal compensation policy was submitted to SBA, as required, and DelVal did not submit any documentation confirming a reduction of the President's salary in 2016.

A review of DelVal's financial statements shows that the CDC President, Michael Schwartz, received the following compensation from 2010 to 2015 (including salary and the aforementioned loan):

| Fiscal Year | Salary    | Balance of Unsecured Loan to President as of Year-end |
|-------------|-----------|---|
| 2010        | \$408,155 | \$286,097   |
| 2011        | \$454,500 | \$336,582   |
| 2012        | \$520,752 | \$309,457   |
| 2013        | \$570,000 | \$292,607   |
| 2014        | \$502,378 | \$286,309   |
| 2015        | \$412,000 | \$233,517   |

SBA has reviewed its records and publicly-available sources regarding the 2014 and 2015 compensation paid to CDC managers for all 11 CDCs located in the Commonwealth of Pennsylvania (Area of Operations), and determined that the compensation paid to DelVal's President is significantly higher than any other CDC in its Area of Operations. A chart reflecting this information is set forth below (in descending order of 2015 Compensation):

| CDC           | 2015 Manager Compensation | 2014 Manager Compensation |
|---------------|---------------------------|---------------------------|
| <b>DelVal</b> | <b>\$ 412,000</b>         | <b>\$ 502,378</b>         |
| CDC #1        | \$ 199,804                | \$ 25,835                 |
| CDC #2        | \$ 191,071                | \$ 206,128                |
| CDC #3        | \$ 181,897                | \$ 178,001                |
| CDC #4        | \$ 164,586                | \$ 158,439                |
| CDC #5        | \$ 163,342                | \$ 179,105                |
| CDC #6        | \$ 135,679                | \$ 136,765                |
| CDC #7        | \$ 132,812                | \$ 198,359                |
| CDC #8        | \$ 130,000                | \$ 144,554                |
| CDC #9        | \$ 90,000                 | \$ 104,841                |
| CDC #10       | \$ 42,644                 | \$ 138,089                |

DelVal has consistently compensated its President almost three times higher than any other Pennsylvania CDC. Despite SBA's request, the CDC has failed to provide any documentation of Board discussions or the process and analysis undertaken by the Board in establishing the President's compensation at this level. Further, DelVal has failed to provide SBA with a copy of its executive compensation policy, as required by the Cure Notice.

Based on DelVal's failure to take the required actions to cure the deficiency after receipt of the Cure Notice, SBA issued the Notice.

SBA has reviewed DelVal's Response and determined that it continues to fail to cure the deficiencies cited and does not provide sufficient grounds to contest the Notice. In DelVal's Response, DelVal admits that the data "supports the conclusion that Mr. Schwartz appears compensated at levels higher than his peers." Despite this acknowledgment, DelVal states that the "Board assures the SBA that historically it has reviewed numerous factors when establishing Mr. Schwartz's compensation" and identifies various alleged factors that were taken into consideration, including the President's "tenure in the 504 industry, expertise in the 504 Program, as well as business development visibility and other intangibles contributing to DelVal's past success." Like DelVal's Cure Response, DelVal makes these assertions but fails to provide any supporting documentation.

DelVal's Response also fails again to provide an executive compensation policy for determining compensation going forward. DelVal did submit a revised Internal Control Policy effective May 31, 2017 (at Exhibit D of DelVal's Response) and that has a section on executive compensation at page 5. However, DelVal states that it has retained a consulting firm "to review Mr. Schwartz's salary and submit a report that is due the end of June and further establish criteria going forward." This report has apparently not been completed and/or has not been submitted to SBA. Therefore, DelVal has not provided an executive compensation policy to SBA that DelVal will use to establish compensation going forward. Without such documentation, the CDC is unable to demonstrate that the Board has ensured that the President's salary will be reasonable and customary for a CDC within its Area of Operations.

In addition, DelVal's Response states that, effective June 1, 2017, the President's salary will be reduced to \$250,000. While this would be a reduction in the President's salary, DelVal has provided no basis for its determination that such a salary is reasonable and customary. In addition, as shown above, the President's salary would still be higher than any other manager compensation for 2014 and 2015 for the 11 CDCs located in Pennsylvania, including those with larger 504 Loan portfolios. Furthermore, SBA questions the reasonableness of this salary as DelVal's President is a chronic regulatory offender, and his stewardship has resulted in regulatory non-compliance by the CDC for over a decade.

In addition, DelVal has not submitted any documentation verifying that the reduction of the President's salary to \$250,000 will take effect, and, in fact, documentation submitted with DelVal's Response presents conflicting information on the amount of the President's 2017 salary. For example, as part of Exhibit H to DelVal's Response, DelVal submitted a memo dated April 17, 2017, from Mary Geise to James Tressler, attorney for DelVal, which states an objective to "[t]ry to get Michael's compensation between \$200,000-\$250,000."<sup>4</sup> However, in that same Exhibit, DelVal submitted a "2017 Projected Income and Expenses" document as part of DelVal's most recent board meeting minutes from May 25, 2017, and the President's salary is projected in that document to be \$325,000, noting that a compensation report will be reviewed at the June Board meeting. The evidence submitted demonstrates that the President's salary for 2017 and the executive compensation policy going forward are in fact unknown at this time.

In the Cure Response, DelVal made similar representations regarding a reduction in Mr. Schwartz's 2016 salary that proved to be untrue. DelVal's Cure Response, which was signed by Mr. Schwartz, stated that DelVal's Board would be reducing Mr. Schwartz's compensation in 2016 and attached an Exhibit marked "A.2.a." with 2016 projections showing "Executive salary 350,000 \* lower than 2015." However, Exhibit H of DelVal's Response and the IRS Form 990 filed with DelVal's fiscal year 2016 Annual Report both reveal that Mr. Schwartz received compensation of \$407,000 in 2016, not the \$350,000 that was represented to SBA in the Cure Response.

The 504 Loan Program is an economic development program, and DelVal is a non-profit, tax-exempt organization that is certified to deliver this program using public funds. DelVal's Board is tasked with the responsibility to set the compensation for DelVal's President and to ensure that his salary is reasonable and customary. *See* 13 C.F.R. § 120.823. DelVal's Board has failed to exercise this responsibility as required, and instead has made vague and conflicting promises to take future action. For the reasons discussed, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to take the actions required by SBA to cure the deficiency associated with the Board's failure to review the salary paid to DelVal's President to ensure that it is reasonable and customary, in violation of 13 C.F.R. § 120.823(d)(3) and (d)(5).

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<sup>4</sup> Counsel for SBA spoke with Mr. Tressler on July 24, 2017 and confirmed with him that, despite the "do not send" entry on top of this document, DelVal intended this document to be part of its Response.

- c. DelVal has failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to maintain satisfactory SBA performance of the CDC's 504 Loan Portfolio as required by 13 C.F.R. § 120.816(c) and 13 C.F.R. § 120.823(d)(14).

In Section I.c of the Notice, SBA charged and the below evidence demonstrates that DelVal failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to maintain satisfactory SBA performance of the CDC's 504 Loan Portfolio as required by 13 C.F.R. § 120.816(c) and 13 C.F.R. § 120.823(d)(14). Title 13 C.F.R. § 120.816(c) requires a CDC to have "satisfactory SBA performance, as determined by SBA in its discretion." Title 13 C.F.R. § 120.823(d)(14) requires the Board of the CDC to establish "commercially reasonable loan approval policies, procedures, and standards."

Finding #10 of the Report stated that DelVal's Lender Purchase Rating (LPR) as of June 30, 2015, was "5," which is defined as a Higher Risk portfolio performance score when compared to its Peer Group and SBA 504 Loan Program portfolio performance for all lenders.

As a Corrective Action, the Report required DelVal to conduct a post-mortem analysis of loans in its 504 portfolio that have defaulted in the last five years. The results of this analysis were to be used to update its loan policies, procedures and internal controls in order to mitigate future loan defaults. This analysis was to be accompanied by a written summary of the loan analysis and modifications to the CDC's policies, procedures and internal controls, along with evidence of Board commentary on the results and approval of policy and procedural changes.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance. The reasons for SBA's determination of continuing non-compliance were set forth in the Cure Notice as follows:

The CDC has neither conducted and submitted, nor addressed the requirement to conduct a post-mortem analysis of the defaulted loans during the last five years (2011-2016). Additionally, the CDC has not provided any evidence that the results of any such analysis have been used to modify the CDC's policies, procedures and internal controls. [...] The Corrective Action requires the CDC to conduct an analysis of all loans that have defaulted over the past five years . . . .

The Cure Notice provided the CDC with an opportunity to cure the deficiency by taking the following actions on or before August 26, 2016:

The CDC must conduct a post-mortem analysis of loans in its 504 portfolio that have defaulted in the last five years (see chart above). This analysis must include, at a minimum, the following details of each loan: Date Funded, Date Charged Off, Third Party Lender, Industry, Location, Loan Type, Loan Officer, Historical Debt Service Coverage, Occupancy, Management Experience, Cash Down Payment,



Working Capital at Origination, and the Results of the Liquidation Efforts. The results of this analysis must be used to guide the CDC in modifying its practices as well as updating its loan policies, procedures and internal controls in order to mitigate future loan defaults. A written summary of the loan analysis and modifications to the CDC's policies, procedures and internal controls, along with evidence of Board commentary on the results and approval of policy and procedural changes, must be submitted to SBA.

SBA reviewed the Cure Response and, although DelVal conducted a post-mortem analysis, SBA determined that DelVal remained in continuing non-compliance. The reasons for SBA's determination were set forth in SBA's Notice, in part, as follows:

. . . only four of the nine Board members commented on the results of the analysis. Generally, the Board commentary was minimal and/or superficial and consisted of emails such as: *"I have reviewed the post-mortem on defaulted loans from 2011 through March 2016. The thoughtful analysis of each loan and recommended course of action adds useful information and standards for the Board to utilize when reviewing future loans."*

DelVal's post-mortem analysis contained recommendations for certain policy and procedural changes such as that the CDC be in more frequent contact with borrowers (every six months), request more detailed information on the owners' management styles and abilities, require that start-up businesses have at least three to six months' worth of expenses in reserves and contribute 20% equity to the project. Despite these recommendations, DelVal failed to provide evidence of any modifications in its policy, procedures or internal controls aligned with the recommendations.

Based on DelVal's failure to take the required actions to cure the deficiency after receipt of the Cure Notice, SBA issued the Notice.

SBA has reviewed DelVal's Response and determined that it continues to fail to cure the deficiencies cited and does not provide sufficient grounds to contest the Notice. The DelVal Response asserts that it conducted the post-mortem analysis and it was carefully reviewed, and commentary was provided by the President to the Board on September 1, 2016. However, a review of the September 1, 2016 Special Meeting agenda and minutes, which were provided at Exhibit H in DelVal's Response, does not reflect a discussion of the post-mortem analysis. In addition, DelVal's assertion that commentary was provided by the President is not in compliance with the action required by SBA that DelVal submit evidence of Board commentary from more than four members.

DelVal's Response also asserts it implemented one of the recommendations from the post-mortem analysis. DelVal states that it instituted tighter credit standards that limit the number of

true startups. However, the specific recommendation from the post-mortem analysis for new businesses to contribute 20% equity to the project was not instituted. DelVal's new Loan Policies and Procedures Manual effective May 31, 2017, provided as Exhibit K to DelVal's Response, adopted a 15% equity injection requirement, which is the minimum borrower contribution requirement for startups found in 13 C.F.R. § 120.910(a)(1).

DelVal's Response does not assert or provide evidence that any other modifications of policies, procedures or internal controls recommended by the post-mortem analysis have been adopted. Rather DelVal asserts that 16 out of the 20 defaulted loans had sufficient historical cash flow and collateral coverage. Those facts, even if true, do not overcome DelVal's failure to provide the required information and take the required action.

DelVal has demonstrated an inability to improve its policies and procedures based on lessons learned from prior 504 Loan defaults, and the Board appears to lack interest in engaging or the ability to engage on this topic. DelVal's failures have increased the risk to SBA, which is the 100% guarantor of the 504 Loans made and serviced by DelVal. For the reasons herein, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to maintain satisfactory SBA performance of the CDC's 504 Loan Portfolio as required by 13 C.F.R. § 120.816(c) and 13 C.F.R. § 120.823(d)(14).

*d. DelVal has failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to submit its Annual Reports within 180 days of the CDC's fiscal year end as required by 13 C.F.R. § 120.830(a).*

In Section I.d of the Notice, SBA charged and the below evidence demonstrates that DelVal failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to submit its Annual Reports within 180 days of the CDC's fiscal year end as required by 13 C.F.R. § 120.830(a). Title 13 C.F.R. § 120.830(a) requires a CDC to submit an Annual Report within 180 days after the end of the CDC's fiscal year (to include Federal tax returns for that year). DelVal has been in continuing violation of this SBA Loan Program Requirement for 10 years (since 2006), by either failing to submit Annual Reports on a timely basis or failing to submit full and complete Annual Reports.

Finding #19 of the Report stated that DelVal is chronically late in the submission of its CDC Annual Report to SBA, which is due within 180 days after the end of the CDC's fiscal year.

As a Corrective Action, the Report required DelVal to immediately submit its 2014 Annual Report to SBA. Additionally, the CDC was directed to develop and implement new policies,

procedures and internal controls to ensure that future reports are submitted in compliance with SBA timelines.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance. The reasons for SBA's determination of continuing non-compliance were set forth in the Cure Notice as follows:

DelVal's late submission of the Fiscal Year 2014 Annual Report continues the pattern established with DelVal's late submission of its Fiscal Year 2011, Fiscal Year 2012 and Fiscal Year 2013 Annual Reports. Additionally, SBA notified the CDC, that the Fiscal Year 2014 and Fiscal Year 2015 Annual Reports are incomplete.

The Cure Notice then proceeded to list the missing information required by SBA Form 1253 (CDC Annual Report Guide) that had not been included in DelVal's 2014 and 2015 Annual Reports. Nine items were missing from the 2014 Annual Report and 10 items were missing from the 2015 Annual Report.

SBA reviewed the Cure Response and determined that DelVal remained in continuing non-compliance. The reasons for the noncompliance were set forth in SBA's Notice, in part, as follows:

2014 Annual Report

- Details on the area of each director's expertise per Tab 2.A.1(b) of the SBA Form 1253: The CDC failed to provide specific information for each Director's area of expertise. 13 C.F.R. § 120.823(a) requires that a CDC Board have expertise in internal controls, financial risk management, commercial lending, legal issues related to commercial lending, and corporate governance. Each Director was listed by position and employer, and described as having expertise in commercial lending. There was no discussion of which, if any, Directors have expertise in the other areas listed previously, as required by 13 C.F.R. § 120.823(a).
- Auditors' report on internal controls per Tab 3.A.4(a) of the SBA Form 1253: The CDC failed to address the requirement of the auditor's letter to management on internal control weaknesses, and instead stated that the auditor had issued a "qualified opinion," citing deficits in the CDC's Defined Benefit Plan.<sup>5</sup>

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<sup>5</sup> The Independent Auditors Report dated October 28, 2015, states the audit is "not for the purpose of expressing an opinion on the effectiveness of the entity's internal control."

- Evidence of Investment in other Economic Development:  
The CDC states that its investment in other economic development consists of the learning process, in terms of time and energy invested, experienced by the President, Michael Schwartz, and a Loan Officer, Kevin Freidrich, on how to access the USDA Rural Loan Guarantee Program. As the CDC has not demonstrated a direct investment in economic development other than as a means of increasing its revenue, this is not considered adequate.

#### 2015 Annual Report

- Details on the area of each director's expertise per Tab 2.A.1(b) of the SBA Form 1253: Inadequate for the same reasons stated above for the 2014 Annual Report.
- Auditors' report on internal controls per Tab 3.A.4(a) of the SBA Form 1253: The CDC failed to address the requirement of the auditor's letter to management on internal control weaknesses, and instead stated that the auditor had issued an "unqualified opinion."<sup>6</sup>
- A breakout of 504 specific income and expense amounts as per Tab 3.B & C of the SBA Form 1253: Not submitted.
- Evidence that the FY2015 Form 990 was submitted to IRS:  
The CDC submitted an untitled document purporting to evidence the submission of the CDC's tax returns to the IRS. The document does not contain any official markings or communications verifying its validity.

Based on DelVal's failure to take the required actions to cure the deficiency after receipt of the Cure Notice, SBA issued the Notice.

SBA has reviewed DelVal's Response and determined that it continues to fail to cure the deficiencies cited and does not provide sufficient grounds to contest the Notice. DelVal's Response admits to late Annual Report filings, commits to timely submission in the future and provides some of the required information identified in the Notice. DelVal submitted evidence that the FY2015 Form 990 was submitted to the IRS and provided a breakout of 504 income and expenses for 2015. However, the Independent Auditor's Reports for fiscal years 2014 and 2015 continue to disclaim any opinion on the effectiveness of the entity's internal controls, and DelVal did not submit revised auditor's letters that comply with SBA Loan Program Requirements.

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<sup>6</sup> The Independent Auditors Report dated June 16, 2016, states the audit is "not for the purpose of expressing an opinion on the effectiveness of the entity's internal control."

In addition, there is no new evidence of investment in other economic development for FY 2014. The \$2,500 contribution that DelVal alleges to have made to the Abraham Lincoln Foundation on behalf of DelVal was made in 2016 according to DelVal's 2016 Annual Report, and the USDA Rural Loan Guarantee Program is an insufficient direct investment in economic development because it appears to be a means of increasing DelVal's revenue. This Response is not adequate.

Furthermore, DelVal's 2016 Annual Report has now been provided to SBA and SBA has determined it is also insufficient. Like DelVal's 2014 and 2015 Annual Reports, the Independent Auditor's Report in the 2016 Annual Report disclaims any opinion on the effectiveness of the entity's internal controls. Additionally, DelVal failed to verify the actual number of jobs created/retained by the borrowers on three out of the five remaining loans funded by DelVal in 2014, which loans reached their two year debenture funding anniversary requiring verification in 2016.

The timely submission of full and complete Annual Reports by CDCs is a critical part of the 504 Loan Program that enables the SBA to carry out its oversight of CDCs. A CDC's failure to comply with this SBA Loan Program Requirement limits SBA's ability to safeguard taxpayer money creating risk for the 504 Loan Program and requires SBA to expend limited resources in an attempt to enforce compliance. The record shows that DelVal has failed to timely submit full and complete Annual Reports to SBA for over a decade. For the reasons herein, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to submit its Annual Reports within 180 days of the CDC's fiscal year end as required by 13 C.F.R. § 120.830(a).

- e. DelVal has failed to take the actions required by SBA to cure the deficiency associated with the failure of DelVal's Board of Directors to exercise all corporate powers and authority and be responsible for all corporate actions and business as required by 13 C.F.R. § 120.823(d).*

In Section I.e of the Notice, SBA charged and the below evidence demonstrates that DelVal failed to take the actions required by SBA to cure the deficiency associated with the failure of DelVal's Board of Directors to exercise all corporate powers and authority and be responsible for all corporate actions and business as required by 13 C.F.R. § 120.823(d). Title 13 C.F.R. § 120.823(d) requires a CDC's Board of Directors to exercise all corporate powers and authority and be responsible for all corporate actions and business.

Finding #5 of the Report stated that DelVal's Board does not maintain an adequate awareness of the CDC's operations. As a Corrective Action, the Report required DelVal to establish and

implement policies, procedures, and internal controls to demonstrate how the Board will gain and maintain awareness of the CDC's operations.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance because "[t]he CDC's response states multiple actions taken by the Board would demonstrate an adequate awareness of CDC operations; however the response did not contain any evidence to support the CDC's claims, and therefore, does not meet the requirements of the Corrective Action."

The Cure Notice provided the CDC with an opportunity to cure the deficiency by taking the following actions on or before August 26, 2016:

The CDC must improve the quality of its Board of Director meeting minutes to demonstrate and evidence that the Board is monitoring the CDC's portfolio performance on a regular basis by including copies of the Board meeting minutes for all meetings that have taken place since September 2015. These minutes should demonstrate adequate reporting on the status of the portfolio to include but not be limited to: reports on Past Due, Delinquent, Catch-Up, and Active Purchase Liquidation Loans, reports on asset quality and industry concentration, as well as the review of any external reports including the recent SMART Targeted Review Report conducted by OCRM [Office of Credit Risk Management]. Additionally, the Board meeting minutes are currently signed solely by Mr. Michael Schwartz, who is the President of the CDC as well as the Secretary of the Board of Directors. To avoid any potential conflicts of interest, the approval of the meeting minutes should be obtained by unanimous consent and certified by more than one person or committee. It is recommended that Mr. Schwartz's signature be accompanied by those of at least two other Directors.

SBA reviewed the Cure Response and determined that DelVal remained in continuing non-compliance. The reasons for the noncompliance were set forth in SBA's Notice, in part, as follows:

Although the CDC has produced packages of Board meeting minutes for the requested time period, the Cure Response is incomplete, and raises questions as to the validity of the dates and the presentations to the Board of Directors at those meetings. After reviewing the meeting minutes submitted by DelVal, SBA determined that:

- (i) DelVal's Board of Directors does not meet quarterly as required by 13 C.F.R. § 120.823(c); and
- (ii) The meeting minutes do not evidence reporting to the Board on asset quality or industry concentration as required by 13 C.F.R. § 120.823(d)(8).

The discrepancies noted by SBA regarding the Board meetings held during the

one year period from September 1, 2015 and August 31, 2016 are set forth below:

| <b>Date of Board Meeting</b> | <b>Operating Period Covered by Board Meeting</b> | <b>Key Issues:</b>   |
|------------------------------|--|--|
| January 19, 2016             | 3 month period ending September 30, 2015         | (i) Meeting for quarter ending September 30, 2015 was held three and one-half months after quarter-end.<br>(ii) Meeting minutes do not evidence reporting to the Board on asset quality or industry concentration. |
| May 4, 2016                  | 3 month period ending December 31, 2015          | (i) Meeting for quarter ending December 31, 2015 was held four months after quarter-end.<br>(ii) Meeting minutes do not evidence reporting to the Board on asset quality or industry concentration.                |
| May 4, 2016                  | 3 month period ending March 31, 2016             | (i) Meeting minutes do not evidence reporting to the Board on asset quality or industry concentration.   |

Based on DelVal's failure to take the required actions to cure the deficiency after receipt of the Cure Notice, SBA issued the Notice.

SBA has reviewed DelVal's Response and determined that it continues to fail to cure the deficiencies cited and does not provide sufficient grounds to contest the Notice. As to the deficiencies cited in the SBA Notice, DelVal's Response states that "Mr. Schwartz reviewed the Loan Portfolio, risk ratings, as well as the concentration on a total loan basis and outstanding dollar amount basis. The Board acknowledges the portfolio is heavily weighted in the hotel and restaurant industry and any future approval in those two industries will be reviewed in greater detail before approval is considered." The Response does not contest the findings in the Notice.

DelVal's Response also admits that "formal quarterly meetings were not scheduled," but that meetings and discussions, such as on formal education, did take place. However, DelVal has not provided any documentation to show that the Board met quarterly as required by 13 C.F.R. § 120.823(c).

DelVal further alleges that it has instituted policies and procedures to be compliant going forward, specifically stating that "[s]tarting April 2016 through September 2016 and most certainly during the present, the Board of Directors has been actively involved in DelVal's oversight" and that new Loan Policy and Procedures Manual has been adopted. DelVal asserts that processes are in place for Board meetings and minutes. However, the evidence submitted with DelVal's Response, as shown in the below chart, demonstrates that the quality of the Board meeting minutes has not sufficiently improved. After reviewing the meeting minutes submitted by DelVal, SBA has determined that:

- (i) DelVal's Board of Directors continued with its failure to meet quarterly as required by 13 C.F.R. § 120.823(c); and
- (ii) the meeting minutes are not clearly certified by at least two other Directors as recommended by the Cure Notice.

| <b>Date of Board Meeting</b> | <b>Operating Period Covered by Board Meeting</b> | <b>Key Issues:</b>  |
|------------------------------|--|---|
| December 8, 2016             | Meeting to approve loan                          | (i) Signature pages have no reference to what loan is approved.<br>(ii) Signature pages do not appear to go with meeting minutes (separate pages and different font).   |
| February 17, 2017            | Meeting to approve loan                          | (i) Signature page has no reference to what loan is approved.<br>(ii) Signature page is not numbered.<br>(iii) Signature page does not appear to go with meeting minutes (separate pages and different font).   |
| April 21, 2017               | Special Meeting                                  | (i) Signature page at page marked "3" is misnumbered because minutes themselves end at page 4.<br>(ii) Unclear if additional signature page goes with minutes because no document title/reference to specific minutes on signature page.<br>(iii) Unclear if minutes signed by two individuals because additional signature page submitted in mailed copy of Response that was not submitted in emailed copy of Response. |
| April 28, 2017               | Fourth Quarter 2016                              | (i) The CDC did not hold a Quarterly Board Meeting for more than four months since the 9/1/16 meeting.<br>(ii) Only submitted in DelVal Response that was mailed.   |
| May 25, 2017                 | First Quarter 2017                               | (i) Independent Loan Review is listed as an agenda item, but the minutes do not reflect a discussion or ratification of that item, as claimed in DelVal's Response.<br>(ii) Additional signature page submitted in mailed copy that was not submitted in emailed copy.<br>(iii) Unclear if additional signature page goes with minutes because no document title/reference to specific minutes on signature page.         |

DelVal's Board continues to demonstrate that it is unable to properly exercise its corporate governance responsibilities by failing to comply with quarterly meeting requirements and failing to create and maintain necessary corporate records. The weakness of DelVal's Board creates risk for SBA. For the reasons herein, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to take the actions required by SBA to cure the deficiency associated with the failure of DelVal's Board of Directors to exercise all corporate powers and authority and be responsible for all corporate actions and business as required by 13 C.F.R. § 120.823(d).

*f. The deficiency associated with DelVal's failure to establish CDC corporate Bylaws in compliance with 13 C.F.R. §§ 120.823(d)(10) and 120.830.*

It is SBA's final decision that DelVal has sufficiently cured this deficiency.



- g. DelVal has failed to take the actions required by SBA to cure the deficiency associated with the failure of DelVal's Board to ensure that the operations of the CDC comply with SBA's Loan Program Requirements as required by 13 C.F.R. § 120.823(d).

In Section I.g of the Notice, SBA charged and the below evidence demonstrates that DelVal failed to take the actions required by SBA to cure the deficiency associated with the failure of DelVal's Board to ensure that the operations of the CDC comply with SBA's Loan Program Requirements as required by 13 C.F.R. § 120.823(d). Title 13 C.F.R. § 120.823(d) provides that a CDC's Board is responsible for ensuring that the operations of the CDC comply with SBA's Loan Program Requirements.

Finding #23 of the Report stated that during the different interviews with DelVal Board members, Directors were not fully able to respond to questions regarding the CDC's recent audit results, and were not aware that the CDC was delinquent in its submission of its Annual Report to SBA. Further the results of the SAR had not been discussed with all Board members.

As a Corrective Action, the Report required that to ensure DelVal's Board of Directors can fulfill the SBA requirement to be responsible for all CDC corporate actions and business, the Board should receive 504-specific training, and the training participation should be documented.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance because "[t]he CDC did not provide evidence of past 504-specific trainings or information on those that are planned for the future."

The Cure Notice provided the CDC with an opportunity to cure the deficiency by taking the following actions on or before August 26, 2016:

The CDC must provide details in order to evidence and document the quality and frequency of 504-specific trainings received by the Board of Directors. The CDC must submit the agendas, Board meeting minutes, and a list of the Board members present at each training that occurred during the last 24 months (June 2014 – June 2016).

SBA reviewed the Cure Response and determined that DelVal remained in continuing non-compliance. The reasons for the noncompliance were set forth in SBA's Notice, in part, as follows:

[T]he Cure Response fails to provide the required evidence and documentation of the quality and frequency of 504-specific trainings received by the Board of Directors. [...] The CDC failed to provide any documentation or evidence of training provided to the Board in the last 24 months, and therefore, the Cure Response is inadequate.

Based on DelVal's failure to take the required actions to cure the deficiency after receipt of the Cure Notice, SBA issued the Notice.

SBA has reviewed DelVal's Response and determined that it continues to fail to cure the deficiencies cited and does not provide sufficient grounds to contest the Notice. DelVal's Response asserts that "[t]hroughout this process, DelVal's Board has been informed and updated." However, SBA has determined that the weight of the evidence, as discussed in the Report, Cure Notice, and Notice, demonstrates otherwise. DelVal's Response further asserts that a September 1, 2016 training took place at a Board meeting; however, a review of the September 1, 2016 Board meeting agenda and minutes does not reflect any training. In addition, DelVal's 2016 Annual Report contains a list of some 2016 trainings and webinars; however the names of the Board members, if any, who were present at each training are not provided.

Although DelVal's Response asserts that "all key DelVal personnel and Board members will participate to the maximum extent possible in NADCO offered training as well as requiring corporate counsel to provide updates and training at each quarterly meeting," this does not excuse DelVal's continuing failure to adequately document receipt of training by the Board in response to SBA's request.

SBA required DelVal's Board to educate itself regarding SBA Loan Program Requirements so that it could properly fulfill its responsibilities to oversee the CDC. The record demonstrates that the Board is unable or unwilling to engage in the required training, and provides another example of the weakness of DelVal's Board. For the reasons herein, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to take the actions required by SBA to cure the deficiency associated with the failure of DelVal's Board to ensure that the operations of the CDC comply with SBA's Loan Program Requirements as required by 13 C.F.R. § 120.823(d).

- h. The deficiency associated with DelVal's failure to obtain hazard insurance on all collateral as required by 13 C.F.R. § 120.160(c) and SOP 50 10 5(H), Subpart C, Chapter 5, Para. I.D.1.*

It is SBA's final decision that DelVal has sufficiently cured this deficiency.

- i. The deficiency associated with DelVal's failure to timely request that SBA purchase debentures on 504 Loans classified in liquidation as required by SOP 50 55, Chapter 14, Paras. A. and C. and Chapter 15, Para. A.*

It is SBA's final decision that DelVal has sufficiently cured this deficiency.

- j. The deficiency associated with DelVal's failure to timely submit Quarterly Delinquency Reports on 504 Loans 60 days or more past due as required by 13 C.F.R. § 120.830(f) and SOP 50 55, Chapter 3, Para. I.I.

It is SBA's final decision that DelVal has sufficiently cured this deficiency.

- k. The deficiency associated with the failure of DelVal's Board to adopt an internal control policy meeting all of the requirements of 13 C.F.R. § 120.826(b) and SOP 50 10 5(H), Chapter 3, Para. II.B.

It is SBA's final decision that DelVal has sufficiently cured this deficiency.

- l. The deficiency associated with the failure of DelVal's Board to direct the operation of a program to conduct an Independent Loan Review on an annual basis meeting the requirements of 13 C.F.R. § 120.826(b)(3) and SOP 50 10 5(H), Chapter 3, Para. II.B.

It is SBA's final decision that DelVal has sufficiently cured this deficiency.

- m. DelVal has failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to risk rate its 504 Loans as required by SOP 50 10 5(H), Chapter 3, Para. II.B.1.(a)iv.

In Section I.m of the Notice, SBA charged and the below evidence demonstrates that DelVal has failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to risk rate its 504 Loans as required by SOP 50 10 5(H), Chapter 3, Para. II.B.1.(a)iv. SOP 50 10 5(H), Chapter 3, Para. II.B.1.(a)iv. requires a CDC to have a risk rating system to risk classify SBA loan assets satisfactory to SBA.

Finding #11 of the Report stated that DelVal does not appropriately risk rate its loans at origination or the annual loan reassessment, which is a violation of SOP 50 10 5(H), Chapter 3, Para. II.B.1.(a)iv. related to risk rating of loans. As a Corrective Action, the Report required DelVal to update its policies, procedures and internal controls to ensure that 504 Loans are risk rated at origination and annually thereafter.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance. The reasons for SBA's determination of continuing non-compliance were set forth in the Cure Notice as follows:

[T]here is no requirement [in the Loan Policy and Procedures Manual ] to risk rate loans at origination within this section. On page seven of the policy within a section titled "Account Management," there is a reference to the Loan Administrator assigning a risk rating, however it is not clear whether this is occurring at origination or during servicing.

Because of DelVal's continuing non-compliance, the Cure Notice provided the CDC with an opportunity to cure the deficiency by taking the following actions on or before August 26, 2016:

The CDC must modify its Loan Policy and Procedures Manual to include a clear and concise policy on loan risk rating. This updated section of the policy should state that loans are risk rated at origination and annually thereafter. It must discuss: 1) the procedures for risk rating each loan at origination, during servicing, and more timely if necessary; and 2) separate procedures for risk rating a loan when the borrower has not submitted updated financial statements (i.e., obtain and monitor borrower personal credit scores, SBPS scores, hazard, life, and property insurance). The update must include the establishment of a watch list for criticized loans, and the procedures for up-grading or down-grading the risk rating of a loan. The CDC must submit this updated Loan Policy and Procedures Manual to SBA.

SBA reviewed the Cure Response and determined that DelVal remained in continuing non-compliance. The reasons for the noncompliance were set forth in SBA's Notice, in part, as follows:

[T]he Cure Response did not address the requirement to provide separate procedures for risk rating a loan when the borrower does not submit updated financial statements (i.e. obtain and monitor borrower personal credit scores, SBPS scores, hazard, life and property insurance). The Cure Response also did not address the requirement to include a watch list for criticized loans and the procedures for up-grading and down-grading the risk rating of a loan.

Based on DelVal's failure to take the required actions to cure the deficiency after receipt of the Cure Notice, SBA issued the Notice.

SBA has reviewed DelVal's Response and determined that it continues to fail to cure the deficiencies cited and does not provide sufficient grounds to contest the Notice. DelVal's Response does provide evidence that its Internal Control Policy (at Exhibit D of DelVal's Response) and Loan Policy and Procedures Manual (at Exhibit K of DelVal's Response) were updated to reflect the above items. However, Tab 4 of the CDC's 2016 Annual Report demonstrates that despite these updated policies, DelVal's loans have not been rated annually. For example, the Risk Rating Report as of March 17, 2017 (the most recent provided to SBA) reflects that 17 out of 94 loans identified were not rated within the last year.

This evidence directly contradicts DelVal's statement in DelVal's Response stating that "[s]ince the onsite 504 audit by SBA in September 2016, DelVal changed its risk rating process to have loans risk rated . . . after funding at least annually." Based on this demonstrated non-compliance, SBA finds that DelVal has not sufficiently implemented a policy to ensure compliance with this

requirement to the satisfaction of SBA as required by SOP 50 10 5(H), Chapter 3, Para. II.B.1.(a)iv.

The risk rating requirement is important because DelVal is servicing loans that are 100% guaranteed by SBA. DelVal's failure to implement a satisfactory risk classification system creates risk to SBA. For the reasons stated herein, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to risk rate its 504 Loans as required by SOP 50 10 5(H), Chapter 3, Para. II.B.1.(a)iv.

- n. DelVal has failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to report on actual job creation/retention numbers as required by SOP 50 10 5(H), Subpart C, Chapter 2, Para. III.H.1.(a)v. and 13 C.F.R. § 120.830(g.)*

In Section I.n of the Notice, SBA charged and the below evidence demonstrates that DelVal has failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to report on actual job creation/retention numbers as required by SOP 50 10 5(H), Subpart C, Chapter 2, Para. III.H.1.(a)v. and 13 C.F.R. § 120.830(g). SOP 50 10 5(H), Subpart C, Chapter 2, Para. III.H.1.(a)v. requires a CDC to list in its Annual Report the actual number of jobs created or retained after the two year anniversary of each 504 Loan's disbursement. Tab 4 of the Annual Report Guide (SBA Form 1253) requires the CDC to collect this information in writing from the borrower on borrower letterhead or in an email from the borrower, and retain the information in the applicable loan file. Title 13 C.F.R. § 120.830(g) requires a CDC to submit other reports as required by SBA, including the actual job creation/retention numbers.

Finding #21 of the Report stated that DelVal does not adequately document and report the job creation/retention numbers associated with its 504 Loan portfolio. The review revealed deficiencies in each of the 15 loans in the credit administration loan sample.

As a Corrective Action, the Report required DelVal to review and update its policies, procedures and internal controls to assure compliance with SBA job creation and retention requirements.

SBA reviewed DelVal's Corrective Action Response and determined that DelVal remained in continuing non-compliance because the "CDC's response provides neither adequate evidence of updates to the loan policy and procedures nor evidence that the noted deficiencies have been remedied."

Because of DelVal's continuing non-compliance, the Cure Notice provided the CDC with an opportunity to cure the deficiency by taking the following actions on or before August 26, 2016:

The CDC must update its policy and procedures manual to outline: 1) its process and procedures for requesting the jobs created/retained information from the borrowers “as of” each loan’s two-year funding anniversary; 2) following up on non-responsive borrowers; and 3) accurately reporting this information in the annual reports. The CDC must provide the updated policy and procedures manual to SBA.

Additionally, the CDC must submit a copy of the request letter that was sent to the borrowers, as well as documentation supporting the jobs created/retained figure submitted in the CDC’s most recent annual report for the following [listed] 10 loans. Acceptable documentation includes a signed and dated letter or an email from an authorized representative of the small business borrower, referencing the loan number and number of jobs created and/or retained as of the two year anniversary of disbursement of the loan. Also, please provide a copy of the SBA Form 1244 (Application for Section 504 Loan) for each of the loans listed below. The ten (10) loans listed below have all passed the two-year anniversary funding date, and the list includes four (4) loans that were tested and found to be deficient during the September, 2015 targeted review.

SBA reviewed the Cure Response and determined that DelVal remained in continuing non-compliance. The reasons for the noncompliance were set forth in SBA’s Notice, in part, as follows:

The Manual did not address the specific details or content of the letter to be sent to the borrower, nor does it discuss the timeline for contacting the borrower in relation to the targeted anniversary date of the loan disbursement. Additionally, the Manual did not discuss the requirement for the borrower’s certification to be by a dated email or a signed and dated letter from an individual authorized by the borrower to report on jobs created/retained numbers. Finally, the Manual did not discuss the requirement to report the jobs created/retained numbers in the Annual Report and that non-responsive borrowers are to have their jobs created/retained numbers reported as zero.

The CDC submitted certain documentation for the 10 loans listed in the Cure Notice. Of the 10 loans, all have letters from DelVal addressed to the borrowers (nine of the letters are dated October 23, 2015 and one is dated March 4, 2016) that requested that the borrowers provide jobs created/retained numbers as of the two-year funding anniversary of the loan. DelVal purported to submit copies of email responses from the borrowers on two of the loans, however the email responses provided by DelVal for both loans predate DelVal’s request letters to the borrowers (June 27, 2014 and July 14, 2014). On the remaining eight loans, DelVal has failed to submit any documentation of borrower response to DelVal’s request letter. Thus, DelVal failed to provide acceptable documentation

supporting the jobs created/retained number for all 10 loans listed in the Cure Notice.

Based on DelVal's failure to take the required actions to cure the deficiency after receipt of the Cure Notice, SBA issued the Notice.

SBA has reviewed DelVal's Response and determined that it continues to fail to cure the deficiencies cited and does not provide sufficient grounds to contest the Notice. With DelVal's Response, DelVal submitted copies of its Internal Control Policy (at Exhibit D of DelVal's Response) and Loan Policies and Procedures Manual (at Exhibit K of DelVal's Response), both effective May 31, 2017. These updated policies do contain information and guidelines that meet SBA Loan Program Requirements. However, while DelVal stated in its Response that since September 2016 it has requested and reported on jobs created and retained; the CDC did not submit any evidence of documentation to substantiate this response and has not provided further information on the ten loans listed in the Cure Notice. Moreover, continuing with its pattern of non-compliance, DelVal's fiscal year 2016 Annual Report shows that DelVal failed to verify the actual number of jobs created/retained by the borrowers on three out of the five remaining loans funded by DelVal in 2014, which loans reached their two year debenture funding anniversary requiring verification in 2016.

One of the purposes of the 504 Loan Program is job creation and retention. By statute, a CDC is required to create or retain one job in its community for every \$65,000 of 504 Loan funds (every \$100,000 if the project involves a small manufacturer). *See* 15 U.S.C § 695(e)(1). This requirement is a key requirement of the 504 Loan Program that promotes economic development within a CDC's Area of Operations. A CDC's failure to comply with SBA Loan Program Requirements regarding verification of job creation and retention by the CDC's borrowers adversely impacts SBA's ability to implement and provide effective oversight of the 504 Loan Program.

For the reasons stated herein, it is SBA's final decision that DelVal has failed to cure a pattern of uncooperative behavior or actions taken that SBA has determined are detrimental to the 504 Loan Program, undermine management of the 504 Loan Program, or are not consistent with standards of good conduct because DelVal has repeatedly failed to take the actions required by SBA to cure the deficiency associated with DelVal's failure to report on actual job creation/retention numbers as required by SOP 50 10 5(H), Subpart C, Chapter 2, Para. III.H.1.(a)v. and 13 C.F.R. § 120.830(g).

## **2. 13 C.F.R. § 120.1400(c)(2) – Failure to Comply Materially with Any Requirement Imposed by SBA's Loan Program Requirements**

In Section II of the Notice, SBA charged and the evidence demonstrates that DelVal failed to comply materially with requirements imposed by SBA's Loan Program Requirements. Based on the failures by DelVal as set forth above, it is SBA's final decision that DelVal has failed to

comply materially with requirements imposed by SBA's Loan Program Requirements.

**3. 13 C.F.R. § 120.1400(c)(7) – Repeated Failure to Correct Continuing Deficiencies**

In Section III of the Notice, SBA charged and the evidence demonstrates that DelVal has repeatedly failed to correct continuing deficiencies. Based on the failures by DelVal as set forth above, it is SBA's final decision that DelVal has repeatedly failed to correct continuing deficiencies.

**4. 13 C.F.R. § 120.1400(c)(9) – DelVal's Actions have Increased SBA's Financial Risk**

In Section IV of the Notice, SBA charged and the evidence demonstrates that DelVal actions have increased SBA's financial risk. Based on the failures by DelVal as set forth above, it is SBA's final decision that DelVal's actions have increased SBA's financial risk.

**V. CONCLUSION**

It is SBA's final decision to permanently revoke DelVal's authority to participate in all aspects of SBA's 504 Loan Program based on the grounds set forth above and permanently transfer DelVal's SBA 504 Loan Portfolio and all of its pending SBA 504 Loan applications, and all rights associated therewith as the Agency shall hereafter direct. It is SBA's determination that the foregoing grounds and failures, either individually or in the aggregate, are sufficient to support the Decision.

In view of the foregoing, from and after the date hereof, DelVal shall no longer have the authority to participate as a CDC in the 504 Loan Program, and is permanently removed from the SBA 504 Loan Program. The revocation of DelVal's 504 Loan Program authority precludes DelVal from continuing to close and service its 504 Loan portfolio and process pending 504 Loan applications. Revocation of DelVal's 504 program authority therefore requires transfer of its 504 Loan portfolio and its pending 504 Loan applications and all rights associated therewith, including all related processing, closing and servicing functions and the right to receive processing, closing, servicing, late and other fees, to an entity or entities authorized by SBA to perform such functions in accordance with applicable law. The power to order such a transfer as an incident to an enforcement action is expressly reserved to the Agency by regulation. *See* 13 C.F.R. § 120.1500(e)(1).

In making this Decision, SBA has been guided by the following principles: (1) protection of the integrity of the SBA 504 Loan Program and the protection of taxpayers from a Lender that has failed to comply with applicable law, regulations and SBA Loan Program Requirements; (2) SBA's evaluation of the impact of the identified grounds and the proposed actions on the identified risk to the SBA 504 Loan portfolio of DelVal; and (3) the inability and/or unwillingness of management and/or the Board of Directors of DelVal to accomplish immediate



action to mitigate the serious issues identified herein dictates more severe enforcement action.

A formal enforcement action is warranted because the record demonstrates, *inter alia*, that there are repeated violations, significant problems in DelVal's systems or controls, substantial law violations, serious compliance problems, and serious reporting failures. Although DelVal may have contributed in the past to SBA's mission under the 504 Loan Program, it has become apparent that DelVal's actions and inactions have significantly increased the risk to the SBA 504 Loan Program. SBA has determined that the remaining CDCs doing business in the Commonwealth of Pennsylvania will be able to adequately serve that market after the departure of DelVal. Accordingly, the nature, extent and severity of DelVal's breaches and violations, including program integrity concerns, inability and/or unwillingness of DelVal's management and Board to correct the deficiencies, corporate governance deficiencies, reporting deficiencies, compliance deficiencies, and increased financial and program risk to SBA, all warrant the permanent revocation of DelVal's authority to participate as a CDC in the 504 Loan Program and require the permanent transfer of DelVal's 504 Loan portfolio.

#### **VI. NOTICE OF APPEAL RIGHTS**

Pursuant to 13 C.F.R. § 120.1600(a)(5), DelVal may appeal this Final Agency Decision only in the appropriate federal district court.

Dated at Washington, D.C. this 11th day of September, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
Susan E. Streich  
Acting Director  
Office of Credit Risk Management